

In the Supreme Court of the United States.

OCTOBER TERM, 1915.

NARCISSO BASSO, APPELLANT,	} No. 142.
v.	
THE UNITED STATES.	

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

This is an appeal from a judgment dismissing the petition, in response to a general demurrer interposed by the Government, on the ground that the alleged claim sounded in tort.

Appellant, a citizen of Porto Rico, was arrested charged with having imported into the island of Porto Rico at the city of Humacao, on the 29th day of April, 1899, a trunk of scissors, valued at \$200, without having made entry of the same in the customhouse and without paying duty thereon. Upon the trial he was found guilty, and imprisoned at the city of San Juan, P. R., for a period of 27 days. He alleges that by reason of false imprisonment he suffered general damages in the sum of \$7,500, and special damages to the extent of \$2,500, making a total of \$10,000.

Appellant's position is that his claim is founded upon the Constitution of the United States, "in that he was deprived of his liberty without due process of law." (App. Brief, p. 1.)

The Government's position is that appellant's alleged claim is predicated upon an action sounding in tort, and that the Court of Claims has, therefore, no jurisdiction of the same.

ARGUMENT.

Under the first point in appellant's brief appears the following:

Concededly the cause of action not merely sounds in tort, but is based solely upon the tortious actions of the agents of the United States.

Appellant relies mainly upon the case of *Dooley v. The United States* (182 U. S. 222-224). In that case the action grew out of a claim for the recovery of duties "illegally exacted upon merchandise alleged not to have been imported from a foreign country." There was no question involved of tortious acts of Government officials, and the case is totally inapposite to the situation presented here. The claim in the case at bar is not founded upon the Constitution in the sense intended in section 145 of the Judicial Code. The alleged damages follow from and are incidental to the arrest and imprisonment of appellant. If appellant was wrongfully imprisoned the tortious act of an official was involved. The law covering the jurisdiction of the Court of Claims upon the subject of torts has been settled by numerous

decisions of this court. In the case of *Schillinger v. The United States* (155 U. S. 163-168), quoted with approval in the Dooley case, *supra*, the court said:

It is said that the Constitution forbids the taking of private property for public uses without just compensation; that therefore every appropriation of private property by any official to the uses of the Government, no matter however wrongfully made, creates a claim founded upon the Constitution of the United States and within the letter of the grant in the act of 1887 of the jurisdiction to the Court of Claims. If that argument be good, it is equally good applied to every other provision of the Constitution as well as to every law of Congress. This prohibition of the taking of private property for public use without compensation is no more sacred than that other constitutional provision that no person shall be deprived of life, liberty, or property without due process of law. Can it be that Congress intended that every wrongful arrest and detention of an individual or seizure of his property by an officer of the Government should expose it to an action for damages in the Court of Claims? If any such breadth of jurisdiction was contemplated, language which had already been given a restrictive meaning would have been carefully avoided.

It is true, also, that to jurisdiction over claims founded "upon any contract, expressed or implied, with the Government of the United States," is added jurisdiction over

claims "for damages, liquidated or unliquidated," but this grant is limited by the provision "in cases not sounding in tort." This limitation, even if qualifying only the clause immediately preceding, and not extending to the entire grant of jurisdiction found in the section, is a clear indorsement of the frequent ruling of this court that cases sounding in tort are not cognizable in the Court of Claims.

Counsel would attempt to escape the effect of the decision in this case by asserting that the court must assume jurisdiction of a case alleged to be founded upon a provision of the Constitution of the United States, even though the claim grew out of acts constituting a tort. In the Schillinger case, however, the court strongly indicated that wrongful arrest and detention of an individual by an officer of the Government would not subject the Government to an action for damages in the Court of Claims.

It is respectfully submitted that the judgment of the lower court should be sustained.

HUSTON THOMPSON,
Assistant Attorney General.

